IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1182 of 1981

with

FIRST APPEAL Nos. 1183/1981 and 1184/1981

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEW INDIA ASSURANCE CO LTD

Versus

JALU CHAKU & 9 ORS

Appearance:

1. First Appeal No. 1182 of 1981

MR A.M. PAREKH Petitioner No. 1

MR PV NANAVATI for Petitioner No. 1

MR VIBHUTI NANAVATI for Petitioner No. 1

..... for Respondent No. 1,8-10

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 22/11/2002

COMMON JUDGEMENT

The New India Assurance Company Limited-appellant original opponent No. 3 has filed these First Appeals against judgement and award dated 14.5.1981 passed by the Motor Accident Claims Tribunal (Auxiliary), Rajkot in Motor Accident Claim Petition Nos. 426 of 1979, 427 of 1979 and 428 of 1979. The learned tribunal by its impugned judgement has awarded a sum of Rs. 23,000/- in claim case No. 426/79 in favour of the claimants and against the Insurance Company along with 6% interest from the date of petition till realisation. So far as claim case No. 427/79 is concerned, the learned Tribunal has awarded Rs. 30,000/- and directed the opponents to pay jointly and severally the said sum to the claimants along with interest at the rate of 6% from the date of petition till realisation. In claim petition No. 428 of 1979, the learned Tribunal has awarded Rs. 27,500/- along with interest at the rate of 6% from the date of petition till the realisation of the amount. The learned Tribunal directed the opponents to pay the said amount jointly and severally to the claimants.

2. As all these claims petitions have been decided together and common judgement has been passed by the Tribunal, I am also disposing of these First Appeals by common judgement, which are filed against the impugned judgement of the learned Tribunal.

2.1 Claim petition No. 426 of 1979 has been preferred by the heirs and legal representatives of deceased Manju Jalu claiming compensation of Rs. 90,000/for death of Manju Jalu. It has been stated that on 10.2.1979 the deceased Maju Jalu was travelling by public carrier bearing registration No. GTS 6679 from Rajkot to Atkot. It was contended that the deceased was the main bread winner of the family having monthly income of Rs. 800/- and that the truck was driven by opponent No. 1 who is an employee of opponent No. 2, owner of the truck which was insured with opponent No. 3, the New India Assurance Co. Limited.

2.2 Claim petition No. 427/1979 has been filed by the legal representatives of the deceased Babu Bachu who was also travelling by this truck which had met with the accident resulting in death of Babu Bachu. The claimants therefore claimed compensation of Rs. 80,000/- for the death of the deceased.

2.3 Heirs and legal representatives of the deceased

Babu Bhikha have filed Claim Petition No. 428/1979 claiming compensation of Rs. 75,000/- for the death of the deceased Babu Bhikha due to the accident which occurred when he was travelling by truck from Rajkot to Atkot .

2.4 It was the case of the claimants that the deceased had paid for the carriage of goods and themselves and that opponent No. 1 who was the driver of the truck had driven the truck rashly and negligently and at an excessive speed, between Virnagar and Atkot when opponent No. 1 lost control over the truck and the truck slipped from the road and went off the road and fell into a beach by the side of the road resulting in death of three persons and loss of goods.

3. In all these cases, opponent No. 3, the New India Assurance Company Ltd. appeared and resisted the claim by filing written statements. In claim petition No. 426 of 1979, opponent No. 3 filed written statement at Exh. 9 contending, inter alia, that the averments made in the claim petitions are not true and not admitted and that opponents have no personal knowledge as to the averments made by the petitioners and that they should be put to strict proof of what they contended. It was contended that opponent No. 1 was driving truck rashly and/or negligently. It was also denied that the deceased was travelling by the truck as paid passengers having paid charges for goods and fares. It was contended that the deceased were unauthorised passengers and their heirs were not entitled to any claim. It was also contended that the Insurance Company was not liable as the vehicle was a goods vehicle and was not permitted to hire or reward. As far as other claim petitions are concerned, namely claim petition Nos. 427/1979 and 428 of 1979, opponent No. 3 has filed written statement at Exh. 10 taking up the same contentions which are raised in claim case No. 426/1979.

4. Before the Tribunal, the claimants led oral and documentary evidence. The Tribunal by its impugned judgement and award held, as regards claim case No. 426/1979, that it was proved that deceased Manji Jalubhai, son of applicant No. 1, died in an accident due to rash and /or negligent driving of truck No. GTS 6679 by opponent No. 1. The Tribunal has further held that opponent No. 3, Insurance Company, failed to prove that the deceased Manji Jalubhai was travelling as unauthorised person and not as a paid passenger in the said truck for goods at the material time as stated in para 4 of its written statement at Exh. 9. In view of

the same, the learned Tribunal has awarded compensation in favour of the claimants and against the opponents to the tune of Rs. 23,000/- in claim petition No. 426/1979, Rs. 30,000/- in respect of claim petition No. 427/1979 and Rs. 27,500/- in claim petition No. 428/1979.

5. Mr. P.V. Nanavati, learned advocate for the appellant Insurance Company has stated that the issued raised in this case is covered by the judgement of the Hon'ble Supreme Court in the case of SMT. MALLAWWA VS. ORIENTAL INSURANCE CO. LTD. reported in AIR 1999 SC 589 = 1999(1) SCC 403. In that case under the provisions of the old Motor Vehicles Act, the Hon'ble Supreme Court considered the scheme of the Act and that was a case of gratuitous passenger. The Hon'ble Supreme Court has held that it would not be proper to consider a goods vehicle as a passenger vehicle on the basis of a single use or use on some stray occasions of that vehicle for carrying passengers for hire or reward. For the purpose of construing a provision like proviso (ii) to Section 95(1)(b) the correct test to determine whether a passenger was carried for hire or reward, would be whether there has been systematic carrying of passengers. Only if vehicle is so used then that vehicle can be said to be a vehicle in which passengers are carried for hire or reward. In view of the same, the Court has held that Insurance Company is not liable when the passengers are carried in goods vehicle.

5.1 The aforesaid judgement of the Hon'ble Supreme Court is further confirmed in the case of RAMESHKUMAR VS. NATIONAL INSURANCE CO. LTD. reported in 2001(6) SCC 713. The aforesaid judgements of the Hon'ble Supreme Court have been considered by this court in the case of GULAMHUSSEN MOHMADBHAI KAZI VS. JAHUR SULEMAN LUHAR in First Appeal No. 188 of 1983 and others decided on 23.8.202.

6. In light of the above observations, the First Appeals are allowed. The judgement and award of the learned Tribunal dated 14.5.1981 is quashed and set aside with no order as to costs qua the New India Assurance Company Ltd., opponent No. 3. The judgement and award of the learned Tribunal dated 14.5.1981 is confirmed qua opponent Nos. 1 and 2, driver of the truck and the owner of the truck respectively.

7. The claimants have also filed Cross Objections. The Cross Objections are dismissed in view of the fact that I have allowed First Appeals on the point of law.

The award and decree be drawn accordingly.

(K.M. MEHTA, J)

(pkn)